IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: David S. Benco, et al.

Application No.: 10/696,066 Examiner: Emem Ekong

Filed: October 29, 2003 Docket No.: LUTZ 2 00212
Case Name/No. Benco 30-22-22-24-22

For: AIR TIME MANAGEMENT

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Fay Sharpe LLP

October 15, 2007
Date

Joseph D. Dreher, Reg. No. 37,123
Thomas Tillander, Reg. No. 47,334
1100 Superior Avenue, Seventh Floor
Cleveland, OH 44114-2579
216-861-5582

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PATENT APPLICATION

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BRIEF ON APPEAL

Appeal from Group 2617

Joseph D. Dreher, Esq., Reg. No. 37,123
Thomas Tillander, Reg. No. 47,334
FAY SHARPE LLP
1100 Superior Avenue – Seventh Floor
Cleveland, Ohio 44114-2579
Telephone: (216) 861-5582
Attorneys for Appellants

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This Appeal Brief is in furtherance to the Notice of Appeal that was mailed to the U.S. Patent and Trademark Office herewith.

The fees required under 37 C.F.R.§1.17 and any required petition for extension of time for filing this brief and fees therefor are addressed in the accompanying transmittal of Appeal Brief.

Appellant files this Appeal Brief in connection with the above-identified application wherein claims 1-30 were finally rejected in the Final Office Action that was mailed June 29, 2007.

I. REAL PARTY IN INTEREST

The real party in interest for this appeal and the present application is Lucent Technologies, Inc. (600 Mountain Avenue, Murray Hill, New Jersey 06974-0636, U.S.A.), by way of an Assignment recorded in the U.S. Patent and Trademark Office at Reel 014661, Frame 0513.

II. RELATED APPEALS AND INTERFERENCES

Currently, it is believed there are no prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignee, that may be related to, or which will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending Appeal.

III. STATUS OF CLAIMS

The status of the claims set forth in the Final Office Action mailed January 4, 2007 was, and is, as follows:

Claims 1-30 are rejected.

The present Appeal is directed specifically to claims 1-30.

IV. STATUS OF AMENDMENTS

An amendment (Response E (After Final)), traversing the rejections of the Office Action that was mailed May 15, 2007, was mailed to the U.S. Patent and Tradeamrk Office on July 25, 2007 and received in the Office on July 30, 2007.

An Advisory Action indicating that the request for reconsideration has been considered but does not place the application in condition for allowance, was mailed by the Office on September 4, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present application is directed toward systems and methods for **screening incoming calls** to help mobile communications subscribers manage or budget their use of air time. That is, while a subscriber may be able to keep track of their air time expenditures and limit their own mobile outgoing calling, it is more difficult to limit calls made by others to the subscriber.

For example, telemarketers may call a subscriber's mobile equipment. If the subscriber answers the call, air time is consumed. The air time may be charged against the monthly allotment or may be billed to the subscriber on a per minute basis. Where a subscriber's user equipment and mobile subscription plan provide for the display of calling line identification information (caller ID), the subscriber may manually manage air time by observing a calling line identification display indicating either a directory number, name or other identification of the calling party and decide whether or not to take the call. Such a decision may be based on the time of day or day of the week and the subscriber's familiarity with provisions of the calling plan of the subscriber. For instance, the subscriber may be willing to take the call if air time is currently unlimited based on the time of the day or the day of the week. However, some subscribers find this method of managing air time unsatisfactory because it requires that they interrupt other activity to access the calling line identification display, and it requires them to remember the details of the their calling plan in order to compare the present time with the air time allocation parameters of the plan.

The subject matter of the present application addresses this problem by allowing the subscriber to establish a list of potential calling parties. The list includes identification information regarding the potential calling parties and allows the subscriber to associate a priority level to each of the list of potential calling parties. **Incoming calls can be screened** based on, for example, a calling line identification or a personal identification code (PIN) associated with the incoming calls and based on, for example, the priority information included in the list of potential calling parties **and on a current cost of message units**.

For example, **independent claim 1** recites: a method (FIG. 1, 110; page 2, line 17 - page 5, line 2; page 6, line 15 - page 9, line 34) for managing message units, the method comprising:

receiving (FIG. 1, 114; Page 6, line 15 - page 7, line 3; page 9, lines 12-31; page 10, lines 12-31; page 11, lines 1-3; page 13, lines 23-26) a list of potential calling parties associated with a subscriber, the list including identification information regarding the listed potential calling parties;

associating (FIG. 1, 118; page 6, line 15 - page 7, line 20; page 8, line 30 - page 9, line 2; page 10, lines 12-31) a priority level to each of the listed potential calling parties; and,

screening ((FIG. 1, 122, 126, 130, 134; page 2, line 24 - page 3, line 14; page 3, line 23 - page 5, line 15; page 6, lines 15-24; page 7, line 10 - page 9, line 34; page 11, line 12 - page 12, line 34; page 14, line 11 - page 15, line 17) calls based on at least one of a calling line identification and a personal identification code associated with the calls and based on information included in the list of potential calling parties, on the associated priorities and on a current cost of message units.

Claim 4 recites: the method of claim 1 wherein screening calls comprises:

determining a calling line identification associated with the calling party (page 2, lines 27-28; page 3, lines 27-33; page 7, lines 10-20);

comparing the calling line identification with the identification information of the listed potential calling parties (page 2, lines 27-30; page 3, lines 27-33; page 7, lines 13-20; page 11, lines 3-7);

finding a calling line identification in the list of potential calling parties that matches the calling line identification associated with the calling party (page 2, lines 30 - 31; page 3, lines 30-31); and

assigning a priority level associated with the calling line identification found in the list of potential calling parties to the calling party (page 2, lines 31-32; page 3, lines 33-34).

Claim 5 recites: the method of claim 1 wherein screening calls comprises:

receiving a personal identification code from the calling party (page 2, lines 33-34; page 3, line 34 - page 4, line 1; page 6, line 30 - page 7, line 3; page 7, lines 21-30);

comparing the personal identification code with the identification information of the listed potential calling parties (page 2, lines 34-35; page 6, line 30 - page 7, line 31; page 7, lines 21-30; page 11, lines 5-7);

finding a personal identification code in the list of potential calling parties that matches the personal identification code received from the calling party (page 3, lines 1-2; page 4, lines 3-4; page 6, line 30 - page 7, line 3; page 7, lines 21-30; page 11, line 7); and

assigning a priority level associated with the personal identification code found in the list of potential calling parties to the calling party (page 3, lines 3-4; page 4, lines 4-6; page 6, line 30 - page 7, line 3; page 7, lines 21-30; page 9, lines 25-31; page 11, lines 7-11).

Claim 6 recites: the method of claim 1 wherein screening calls comprises:

completing the requested call to a mobile device of the subscriber if the current ration state is unrestricted and the priority level of the calling party is high (page 3, lines 12-14; page 4, lines 25-29; page 5, lines 1-10; page 7, line 31 - page 9, line 31).

Claim 7 recites: the method of claim 1 wherein screening calls comprises:

requesting billing information regarding the subscriber from a billing system (page 3, line 5-11; page 4, line 30 - page 5, line 2).

Claim 8 recites: the method of claim 7 wherein requesting billing information regarding the subscriber from a billing system comprises:

requesting information regarding unused allocated air time from an allotment of air time in an air time allocation period associated with the subscriber (page 3, lines 5-11; page 4, line 30 - page 5, line 2).

Claim 9 recites: the method of claim 7 wherein requesting billing information regarding the subscriber from a billing system comprises:

requesting information regarding a current cost to the subscriber of air time (page 2, lines 17-23; page 3, lines 5-11; page 4, line 30 - page 5, line 2; page 5, line 11 - page 6, line 2; page 9, lines 3-11).

Independent claim 10 recites: a method for managing air time, the method comprising:

receiving a list of potential calling parties associated with a subscriber, the list including identification information regarding the listed potential calling parties (FIG. 1, 114; Page 6, line 15 - page 7, line 3; page 9, lines 12-31; page 10, lines 12-31; page 11, lines 1-3; page 13, lines 23-26);

associating a priority level with each of the listed potential calling parties (FIG. 1, 118; page 6, line 15 - page 7, line 20; page 8, line 30 - page 9, line 2; page 10, lines 12-31);

receiving a call request from a calling party directed at user equipment of the subscriber (FIG. 1, 122; page 6, lines 15-24; page 7, lines 10-20; page 9, lines 3-16; page 10, line 32 - page 11, line 1; page 11, lines 19-23; page 13, lines 1-28);

determining a priority level associated with the calling party (FIG. 1, 126; page 6, lines 15-24; page 7, lines 1-5; page 7, lines 10-20; page 9, lines 16-25; page 10, line 32; - page 11, line 1; page 14, lines 11-31);

determining a current air time ration state associated with the subscriber (FIG. 1, 130; page 6, lines 15-24; page 7, lines 3-9; page 7, line 31 - page 10, lines 11; page 14, lines 23-31); and

processing the call request according to the current ration state and the priority level of the calling party (FIG. 1, 134; page 6, lines 15-24; page 9, lines 12-34; page 14, line 32 - page 15, line 17).

Claim 13 recites: the method of claim 10 wherein determining the priority level associated with the calling party comprises:

determining a calling line identification associated with the calling party (page 2, lines 27-28; page 3, lines 27-33);

comparing the calling line identification with the identification information of the listed potential calling parties (page 2, lines 27-30; page 3, lines 27-33; page 7, lines 13-20; page 11, lines 3-7);

finding a calling line identification in the list of potential calling parties that matches the calling line identification associated with the calling party (page 2, lines 30-31; page 3, lines 30-31); and

assigning a priority level associated with the calling line identification found in the list of potential calling parties to the calling party (page 2, lines 31-32; page 3, lines 33-34).

Claim 14 recites: the method of claim 10 wherein determining the priority level associated with the calling party comprises:

receiving a personal identification code from the calling party (page 2, lines 33-34; page 3, line 34 - page 4, line 1; page 6, line 30 - page 7, line 3; page 7, lines 21-30);

comparing the personal identification code with the identification information of the listed potential calling parties (page 2, lines 34-35; page 6, line 30 - page 7, line 31; page 7, lines 21-30; page 11, lines 5-7);

finding a personal identification code in the list of potential calling parties that matches the personal identification code received from the calling party (page 3, lines 1-2; page 4, lines 3-4; page 6, line 30 - page 7, line 3; page 7, lines 21-30; page 11, line 7); and

assigning a priority level associated with the personal identification code found in the list of potential calling parties to the calling party (page 3, lines 3-4; page 4, lines 4-6; page 6, line 30 - page 7, line 3; page 7, lines 21-30; page 9, lines 25-31; page 11, lines 7-11).

Claim 15 recites: the method of claim 10 wherein determining the current air time ration state associated with the subscriber comprises:

determining a remaining air time allocation period fraction associated with the subscriber (page 4, lines 7-12; page 8, lines 20-29; page 11, line 33 - page 12, line 19);

determining a remaining air time allocation fraction associated with the subscriber (page 4, lines 7-12; page 8, lines 20-29; page 11, line 33 - page 12, line 19);

determining a remaining air time allocation period to air time allocation fraction ratio associated with the subscriber (page 4, lines 7-12; page 8, lines 20-29; page 11, line 33 - page 12, line 19); and,

determining the current air time ration state based on the air time allocation period to air time allocation fraction ratio (page 4, lines 7-12; page 8, lines 20-29; page 11, line 33 - page 12, line 19).

Claim 16 recites: the method of claim 10 wherein determining the current air time ration state associated with the subscriber comprises:

calculating the current air time ration state based on a function of remaining allocated air time in an air time allocation period (page 4, lines 13-15; page 8, line 30 - page 9, line 2).

Claim 17 recites: the method of claim 10 wherein determining the current air time ration state associated with the subscriber comprises:

calculating the current air time ration state based on a current subscriber cost of air time (page 4, lines 16-18; page 3, lines 5-11; page 5, lines 1-2; page 9, lines 3-11).

Claim 18 recites: the method of claim 10 wherein determining the current air time ration state associated with the subscriber comprises:

determining a current time associated with the subscriber (page 4, lines 19-24; page 7, line 31 - page 8, line 17; page 12, lines 10-19);

determining a remaining air time allocation associated with the current time (page 4, lines 19-24; page 7, line 31 - page 8, line 17; page 12, lines 10-19); and,

determining the current air time ration state as a function of the remaining air time allocation (page 4, lines 19-24; page 7, line 31 - page 8, line 17; page 12, lines 10-19).

Claim 19 recites: the method of claim 18 wherein determining a current time comprises:

determining a current day of a week (page 2, lines 5-11; page 4 lines 19-24; page 7, line 31 - page 8, line 3).

Claim 20 recites: the method of claim 18 wherein determining a current time comprises:

determining a current time of day (page 4, lines 22-24; page 7, line 31 - page 8, line 3).

Claim 21 recites: the method of claim 10 wherein processing the call according to the current ration state and the priority level comprises:

completing the requested call to a mobile device of the subscriber if the current ration state is unrestricted and the priority level of the calling party is high (page 4, lines 25-29; page 12, lines 14-19; page 14, lines 26-29; page 14, lines 10-17); and

connecting the calling party to a message service if the current ration state is at a maximum restriction and the priority level of the calling party is low (page 4, lines 25-29).

Claim 22 recites: the method of claim 10 wherein determining the current air time ration state associated with the subscriber comprises:

requesting billing information regarding the subscriber from a billing system (page 3, line 5-11; page 4, line 30 - page 5, line 2).

Claim 23 recites: the method of claim 22 wherein requesting billing information regarding the subscriber from a billing system comprises:

requesting information regarding unused allocated air time from an allotment of air time in an air time allocation period associated with the subscriber. (page 3, lines 5-11; page 4, line 30 - page 5, line 2)

Claim 24 recites: the method of claim 22 wherein requesting billing information regarding the subscriber from a billing system comprises:

requesting information regarding a current cost to the subscriber of air time (page 2, lines 17-23; page 3, lines 5-11; page 4, line 30 - page 5, line 2; page 5, line 11 - page 6, line 2; page 9, lines 3-11).

Independent claim 25 recites: a system operative to conserve message units for a subscriber, the system comprising:

a potential caller list manager (FIG. 2, 214; page 10, lines 1-30) operative to receive and maintain a list of potential callers in association with priority levels of the callers, the list being associated with the subscriber;

a message unit conserver (FIG. 2, 218; page 10, lines 1-11; page 10, line 32 - page 14, line 33) operative to determine a priority of a calling party based on the list of potential callers and to determine a current message unit ration state based on a current cost of message units to the subscriber; and

a call processor (FIG. 2, 222; page 10, lines 1-11; page 12, lines 22-34; page 14, line 29 - page 15, line 17) operative to process a call request of the calling party based on the determined priority of the calling party and the determined current message unit ration state.

Claim 26 recites: the system of claim 25 wherein the message unit conserver is operative to determine the current message unit ration state based on a current opportunity cost measured in terms of remaining message units from a basic allotment of message units in a message unit allocation period (page 5, lines 11-19; page 5, lines 20-22; page 11, lines 12-23).

Claim 27 recites: the system of claim 25 wherein the message unit conserver is operative to determine a priority of a calling party based on the list of potential callers and to determine a current message unit ration state based on a current cost of message units to the subscriber (page 5, lines 11-19; page 5, lines 23-29; page 14, lines 11-31).

Claim 28 recites: the system of claim 25 wherein the message unit conserver is operative to request a current message unit billing category associated with the subscriber from a billing system, to receive the current message unit billing category and use the current billing category to determine the current message unit ration state based on a current cost of message units to the subscriber (page 14, lines 11-31).

Claim 29 recites: the system of claim 25 wherein the message unit conserver is operative to request information from a billing system regarding used message units in a current message unit billing category from an allotment of message units in the current message unit billing category associated with the subscriber, to receive the information regarding the used message units and use the information regarding the used message units to determine the current message unit ration state (page 14, lines 11-31).

Independent claim 30 recites: a system for managing message units, the system comprising:

means for receiving (FIG. 2, 214; 254, 234; page 10, lines 1-30; page 10, lines 1-31; page 13, lines 1-16; page 11, lines 12-23) a list of potential calling parties associated with a subscriber, the list including identification information regarding the listed potential calling parties;

means for associating (FIG. 2, 234, 262, 258; page 10, lines 1-30; page 13, lines 1-16) a priority level with each of the listed potential calling parties;

means for receiving (FIG. 2, 242; page 10, lines 1-31) a call request from a calling party directed at user equipment of the subscriber;

means for determining a priority (FIG. 2, 214, 218; page 10, lines 1-11; page 10, line 32 - page 14, line 33) level associated with the calling party;

means for determining a current message unit ration state (FIG. 2, 218; page 10, lines 1-11; page 10, line 32 - page 14, line 33) associated with the subscriber; and

means for processing the call request (FIG. 2, 222; page 10, lines 1-11; page 12, lines 22-34; page 14, line 29 - page 15, line 17) according to the current ration state and the priority level of the calling party.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are presented for review:

claims 1-9 and **25-29** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,930,700 to Pepper, et al. ("Pepper") in view of U.S. Patent Application Publication No. 2002/0111153 A1 to Hartmaier, et al. ("Hartmaier");

claims 10-18, **21-24** and **30** are rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of U.S. Patent No. 5,826,185 to Wise, et al. ("Wise"); and

claims 19 and **20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of Wise and further in view of U.S. Patent No. 6,745,025 B1 to Chow, et al. ("Chow").

VII. ARGUMENT

A. Overview

Claims 1-9 and **25-29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of Hartmaier.

As stipulated by the Office Action, the primary reference of the Office Action to Pepper is directed to a system and method for automatically screening and directing incoming calls that **does not include** screening calls based on a current cost of message units.

It is respectfully submitted that the secondary references do not cure this deficiency of Pepper.

Hartmaier allegedly discusses a prepaid subscriber account system for use with a wireless telephone system. The system monitors a subscriber's call, deducts the cost of the call from the subscriber's prepaid account in real time, warns the subscriber during a call when the account is near depletion and terminates the call when the account is depleted. The system can also prevent the initiation of a new call when **the account** is depleted (Abstract).

Contrary to the assertions of the Office Action, Hartmaier does not disclose or suggest screening calls **based on a current cost** of message units. Paragraph 72, cited by the Office Action, indicates that if the call monitoring module determines **that the subscriber does not have** a sufficient **account balance** (or, in the words of the Abstract, if the account is depleted) to accept the incoming call, the call monitoring module can respond to the FAVAIL command with an actcode parameter that indicates 'block the call'.

However, while Hartmaier deducts money from an account to pay for a call, Hartmaier **does not** consider the current cost of air time or a current air time ration state before completing or connecting the call in order to determine whether or not the call should be completed or connected to the calling party, sent to voice mail or processed in some other way. It is respectfully submitted that the prevention of call initiation of Hartmaier is based on whether or not the called party's account has any money or other credit in it (or, in the words of the Abstract, if the account is depleted), and not on the

current cost of air time or a current air time ration state. Hartmaier **does not** disclose or suggest that the sufficiency of account balance test is based on a current cost of air time. It is respectfully submitted that any reading of Hartmaier as suggesting use of a current cost of air time in an incoming call screening process is based on **impermissible hindsight** after reading and understanding the present application.

B. The Claims are not Obvious

Claims 1-9 and **25-29** were rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of Hartmaier.

In explaining the rejection of **claim 1**, the Office Action stipulates that Pepper fails to disclose screening calls based on a current cost of message units and relies on paragraphs 72 and 79-82 of Hartmaier for this disclosure. However, it is respectfully submitted that the cited portions of Hartmaier do not disclose or suggest screening calls on the basis of a current cost of message units. Moreover, the combination of Pepper and Hartmaier does not disclose or suggest screening calls based on at least one of a calling line identification and a personal identification code associated with the calls and based on information included in the list of potential calling parties, on the associated priorities and on a current cost of message units as recited in **claim 1**.

Paragraph 72 of Hartmaier indicates that a call monitoring module determines whether or not a subscriber has a sufficient account balance to accept an incoming call. Hartmaier does not disclose or suggest that this determination is based on a current cost of message units. Paragraphs 79-82 discuss variations in per-minute charges for airtime usage, toll charges and the definition of the "local calling area." However, there is no suggestion that this information is used in the screening of calls. Even if Hartmaier discloses a system that monitors calls, deducts the cost of the calls from a subscriber's account in real time, warns when the account is near depletion, terminates the call when the account is depleted and prevents call initiation when the account is depleted, Hartmaier does not disclose or suggest considering a current cost of air time before connecting or completing a call in order to determine whether the call should be completed to the called party, sent to voice mail or processed in some other way. These processes of Hartmaier, other than the depleted account test, occur after a call

has been connected. Accordingly, Hartmaier **does not** disclose or suggest considering a current cost of air time when making a **call screening** decision.

It is respectfully submitted that the rate information discussed in paragraphs 79-82 is used to calculate the running cost of a call as explained, for example, in paragraph 34 of Hartmaier. The call monitoring module calculates the running cost of the call and this running cost is deducted from the prepaid account balance. When the call is completed [or ended as Hartmaier uses the word --completed-- here], the monitoring stops. If the cost for the call approach or exceed a threshold, then the call monitoring module causes the MSC to conference an IVR into the call path so that the IVR can play an appropriate warning message. The call monitoring module can also instruct the MSC to terminate the call when the prepaid account balance drops below a preselected amount (paragraph 35).

For at least the foregoing reasons, Hartmaier does not include the subject matter for which it is relied. Accordingly, **claim 1**, as well as **claims 2-9**, which depend therefrom, is not anticipated and is not obvious in light of Pepper and Hartmaier taken alone or in any combination and reversal of the rejections is requested.

Additionally, it is respectfully submitted that the motivation to read into Hartmaier subject matter from the present application could only have been gleaned from the present application. Accordingly, the rejection of **claims 1-9** are based on **impermissible hindsight** and, again, **claim 1**, as well as **claims 2-9**, which depend therefrom, is not anticipated and is not obvious in light of Pepper and Hartmaier and reversal of the rejections is requested.

Regarding **claims 6-9**, and more particularly in an apparent reference to **claims 8** and **9**, the Office Action asserts that Hartmaier discloses wherein screening calls comprises: completing the requested call to a mobile device of the subscriber if the current ration state is unrestricted, requesting billing information regarding the subscriber from a billing system; wherein requesting billing information regarding the subscriber from a billing system comprises: requesting information regarding unused allocated air time from an allotment of air time in an air time allocation period associated with the subscriber and directs the attention of the Applicants to FIG. 6, steps 602-604 and paragraph 71 of Hartmaier in support of the assertion.

However, paragraph 71 is silent with regard to air time. Paragraph 70 explains that in a call delivery process (paragraph 63), once it is established that the subscriber's telephone is turned on and has registered with a serving MSC, a CALL DELIVERY process starts when the MSC sends a facility selected and available (FAVAIL) command to the call monitoring module at step 602. Paragraph 71 further indicates that if the call monitoring module determines that the subscriber has a sufficient account balance to accept the call, it responds to the FAVAIL command at step 603 by returning an actcode parameter that incidates 'continue processing'. The serving MSC then sets up the call at step 604.

The remainder of paragraph 71 indicates that, when triggered, a call monitoring module starts a timer and begins monitoring the subscriber account balance and prepares to respond to an ORREQ command. When the parties hang up, the MSC detects this and sends and ORREQ command to the call monitoring module with a trigger-type parameter indicating 'disconnect'. The call monitoring module then stops the call timer and the account balance monitoring at step 610.

It is respectfully submitted that FIG. 6, steps 602-604 and paragraph 71 are **unrelated to call screening**. Instead, it is respectfully submitted that steps 602-604 and paragraph 71 are directed toward activities that occur after a call has been established or has been connected. Furthermore, the cited portion of Hartmaier is silent with regard to air time.

With apparent reference to **claim 9**, the Office Action asserts that Hartmaier discloses the subject matter of **claim 9** and directs the attention of the Applicants to paragraphs 79-82. However, while the cited portion of Hartmaier discusses access fees and per-minute charges as well as toll charges and aspects related to "local calling area," that discussion is presented in the context of call monitoring and **is unrelated to call screening**. Accordingly, Hartmaier does not disclose or suggest requesting information regarding a current cost to the subscriber of air time as part of a call screening process as is recited in **claims 1, 7** and **9**. Any suggestion to interpret Hartmaier otherwise could only have been gleaned from the present application and is, therefore, based on **impermissible hindsight reasoning**.

For at least the foregoing additional reasons, **claims 7, 8** and **9** are not anticipated and are not obvious in light of Pepper and Hartmaier.

The reasoning and citations presented by the Office Action with regard to **claim 25** are similar to those presented in the explanation of the rejection of **claim 1**. In this regard, arguments similar to those submitted in support of **claim 1** are submitted in support of **claim 25**.

For example, the assertion that paragraphs 72 and 79-82 of Hartmaier disclose a system operative to conserve message units for a subscriber comprising determining a current message unit ration state based on a current cost of message units to the subscriber and processing call requests based on determined current message unit ration states is respectfully traversed. Hartmaier is unconcerned with **conserving message units**. Instead, Hartmaier allows all calls as long as the subscriber's account balance is sufficient. Hartmaier is silent with regard to message units. Hartmaier discusses determining a cost of air time. However, Hartmaier does not disclose or suggest determining a cost of air time for the purpose of screening calls. Instead, Hartmaier determines the cost of air time in order to deduct the appropriate amount from a subscriber's account. As explained in paragraph 72, the call monitoring module issues a command to block a call only when the subscriber's account balance is insufficient to cover the cost of connecting the call. Accordingly, even if the account balance of the subscriber of Hartmaier were an account balance of message units (which is disputed), Hartmaier does not disclose or suggest **conserving** those message units. At the point that Hartmaier begins blocking calls, it is respectfully submitted that there would be no message units left to conserve.

Paragraphs 79-82 discuss operations of a call monitoring module associated with monitoring the subscriber account balance (paragraph 71, column 2). The call monitoring module charges for calls. For example, paragraph 80 indicates that the call monitoring module can be instructed not to charge for incoming calls that last less than predetermined time or for calls from specified numbers. Paragraph 82 indicates that long distance charges can be automatically deducted from subscriber accounts. However, it is respectfully submitted that even if Hartmaier discusses a cost of message units to the subscriber, Hartmaier does not disclose or suggest screening calls or a call

processor operative to process a call request of a calling party based on a determined priority of the calling party and a determined current message unit ration state wherein the current message unit ration state is determined based on a current cost of message units to the subscriber as is recited in **claim 25**.

Accordingly, Hartmaier does not disclose or suggest the subject matter for which it is relied and the Office has not met its burden for presenting a case of ***prima facie*** obviousness. For at least the foregoing reasons, **claim 25**, as well as **claims 26-29**, which depend thereform, is not anticipated and is not obvious in light of Pepper and Hartmaier.

With regard to **claims 26-29**, the Office Action directs the attention of the Applicants to paragraphs 61-62 and 71 of Hartmaier and asserts that the combination of Pepper and Hartmaier discloses the subject matter of **claims 26-29**.

However, the cited portions of Hartmaier are not related to screening calls, and the Office Action does not explain how the cited subject matter from Hartmaier would be combined with subject matter from Pepper. Accordingly, it is respectfully submitted that the Office has not met its burden for presenting a case of ***prima facia*** **obviousness**, and **claims 26-29** are not anticipated and are not obvious in light of Pepper and Hartmaier.

Furthermore, paragraphs 61 and 62 discuss monitoring an account balance during the course of a call and are unrelated to screening a call. It is respectfully submitted that discussion of ending a call because a subscriber's account no longer includes sufficient funds to pay for continuing the call found in the cited portions of Hartmaier does not disclose or suggest managing air time or **conserving air time** or screening calls on the basis of a priority level of a caller and a current cost of air time or ration state. Furthermore, it is respectfully submitted that combining disclosure of call screening according to the method of Pepper with prepaid account monitoring of Hartmaier does not even disclose or suggest screening calls on the basis of a monitored account balance. It is respectfully submitted that such a suggestion could only have been gleaned from a review of the present application. Accordingly, the rejection of **claims 26-29** are based on **impermissible hindsight** reasoning and **claims 26-29** are not anticipated and are not obvious in light of Pepper and Hartmaier.

Claims 10-18, 21-24 and **30** were rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of Wise.

Wise allegedly discloses a cellular phone system in which a cellular phone user (CPU) has a cellular phone with a prepaid amount of available air time. The CPU prepays for a particular number of airtime units. When a cell site receives a call from the CPU, the cell site communicates with a mobile telecommunications switching office (MTSO), which recognizes a unique serial number from the cellular phone. The MTSO directs the call to a prepaid airtime transaction tracking interface (PATTI). The PATTI then checks whether the CPU's account has any available airtime units and may indicate the number of units to the CPU. If none, the PATTI does not answer the call; otherwise, the PATTI connects the call and deducts airtime units until the call is disconnected (Abstract). It is respectfully submitted that Wise does not disclose or suggest screening calls or screening calls on the basis of a current cost of message units.

The Office Action appears to rely on Wise for disclosure of screening calls comprising completing the requested call to a mobile device of the subscriber if the current ration state is unrestricted. However, the portions of Wise cited by the Office Action are, and Wise as a whole is, for the most part, directed to processing an outgoing call from a subscriber (i.e., CPU) and **not** screening calls **incoming** to the subscriber. An exception found by the Applicants occurs at column 3, lines 40-43, wherein it is explained that the MTSO is programmed, based on the CPU's choice, to block incoming calls or having the calling party pay. It is respectfully submitted that Wise does not disclose or suggest screening calls or making call screening decisions based on a current cost of message units.

Additionally, Wise does not disclose or suggest processing a call request received from a calling party directed at user equipment of a subscriber according to a current ration state and the priority level of the calling party, as recited, for example, in **claim 10** of the present application. The Office Action relies on the Abstract and portions of columns 1 and 2 of Wise for such disclosure. However, the cited portions of Wise discuss an **outgoing call** and not the screening of an incoming call, Wise does

not include the subject matter for which it is relied, and Wise does not cure the deficiencies of Pepper.

In explaining the rejections of **claims 10** and **30**, the Office Action stipulates that Pepper fails to disclose a method of managing air time comprising determining a current air time ration state associated with the subscriber and processing the call request according to the current ration state and relies on column 1, line 61 - column 2, line 10, of Wise for this disclosure.

However, like Hartmaier, the cited portion of Wise is only concerned with whether or not there is any air time minutes available in the prepaid account of a cellular phone user or if the account has expired. It is respectfully submitted that if the account has expired or if there are no air time minutes available in the account, there can be no air time to ration. Accordingly, under these circumstances, Wise does not disclose or suggest managing air time or determining an air time ration state. If there is air time credited to the account of the cellular phone user of Wise, then, as explained in the cited portion of columns 1 and 2, the cellular phone user is allowed to place **an outgoing call**. Accordingly, under this circumstance, Wise does not disclose or suggest managing air time or processing a call request according to a current **ration** state.

Moreover, **claim 10** recites *inter alia*: processing the call request according to the current ration state and the priority level of the calling party. It is respectfully submitted that there is no motivation in Pepper and Wise or the art as a whole, other than that which can be gleaned from the present application, for processing a call according to a combined consideration of both a priority of a calling party and a current cost of air time as recited in **claim 10**. Accordingly, the rejection of **claim 10** is based on **impermissible hindsight reasoning**, and the Office has not met its burden for presenting a ***prima facia*** case of obviousness. Similar comments are applicable to the respective --means for-- language of **claim 30**.

For at least the foregoing reasons, **claim 10**, as well as **claims 11-24**, which depend therefrom, and **claim 30** are not anticipated and are not obvious in light of Pepper and Wise.

Additionally, regarding **claims 13** and **14**, the Office Action relies on and cites various portions of Pepper. However, **claims 13** and **14** recite determining a priority level associated with the calling party comprises *inter alia*: determining a calling line identification associated with the calling party and receiving a personal identification code from the calling party, respectively.

It is respectfully submitted that even if the cited portions of Pepper could be construed as disclosing determining a calling line identification associated with the calling party, the cited portions of Pepper do not disclose or suggest receiving a personal identification code from the calling party. Instead, as an alternative to automatic number identification, Pepper suggests "speaker identification" (column 6, lines 23-24; column 10, lines 51-53; column 12, line 9). It is respectfully submitted that disclosure of using a speaker identification system does not disclose or suggest receiving a personal identification code.

With regard to **claim 15**, the Office Action simply asserts that Pepper and Wise disclose the subject matter of **claim 10** and the subject matter of **claim 15** and directs the attention of the Applicants to FIGS. 2E and 2F and portions of columns 4 and 5. However, **claim 15** recites *inter alia*: determining a remaining air time allocation period fraction, determining a remaining air time allocation fraction, determining a remaining air time allocation period to air time allocation fraction **ratio** and determining a current air time ration state based on the air time allocation period to air time allocation fraction ratio. It is respectfully submitted that Wise **does not** disclose or suggest determining either of the fractions recited in **claim 15** or the ratio recited in **claim 15**. Clarification was respectfully requested but not provided.

Furthermore, FIG. 2E illustrates the real time function, the system monitoring the duration of the call and then determining which billing formula the CPU should be charged as a local, long distance or international, the billing rate selection being dependent on where the call is directed (column 4, lines 26-32, cited by the Office Action). Accordingly, **FIG. 2E** is related to processing related to an **outgoing call** and not to call screening. **FIG. 2F** illustrates the hang-up function, the system checking to see if the call duration is less than 59 seconds (column 4, lines 45-48, cited by the

Office Action). Accordingly, FIG. 2F is related to processing that occurs **after a call has ended** and is not related to call screening.

With regard to **claims 16**, **18** and **21**, the Office Action stipulates that Pepper fails to disclose certain aspects of those claims and relies on Wise to cure these deficiencies. In an apparent reference to **claim 16**, the Office Action directs the attention of the Applicants to portions of columns 1 and 2 and to portions of columns 3 and 4. However, **claims 16**, **18** and **21** depend ultimately from **claim 10**, and **claim 10** recites aspects related to screening an incoming call (e.g., receiving a call request from a calling party, determining a priority level associated with the calling party, etc.). The cited portion of columns 1 and 2 of Wise discuss aspects related to an outgoing call (e.g., column 1, lines 53-60). Furthermore, Wise does not disclose or suggest **rationing** air time or a current air time **ration** state. In the system of Wise, if any air time is available in the account of the CPU, the CPU is allowed to make an outgoing call. If there is no air time available, **there is no air time to ration** and the CPU is not allowed to place a call (column 1, line 57 - column 2, line 10). Similar comments are applicable to the cited portions of columns 3 and 4 with the single exception that column 3, lines 40-43, discusses either blocking incoming calls or having the calling party pay for the incoming call. Accordingly, it is respectfully submitted that Wise does not disclose or suggest screening calls or calculating a current air time ration state for screening calls based on a function of remaining allocated air time.

In an apparent reference to **claim 18**, the Office Action asserts that Wise discloses the subject matter of **claim 18** and again directs the attention of the Applicants to the portions of columns 1-4 previously discussed. However, the cited portions of column 1-4 do not disclose or suggest determining a current time associated with a subscriber or determining a current air time ration state as a function of the remaining air time allocation or determining a remaining air time allocation associated with the current time as recited in **claim 18** and the Office has not met its burden of presenting a case of ***prima facie*** **obviousness** and reversal of the rejections is requested.

In an apparent reference to **claim 21**, the Office Action directs the attention of the Applicants to column 2, lines 10-20 (apparently of Wise), and asserts *inter alia*: that

Wise discloses connecting the calling party to a message service if the current ration state is at a maximum restriction. However, the cited portion is silent with regard to connecting a calling party to a message service. The cited portion of column 2 does not disclose or suggest a message service. Instead, the cited portion is a continuation of a description of a process for a subscriber placing an outgoing call in the system of Wise. The prepaid air time transaction tracking interface (PATTI) plays a tone which indicates to the cellular phone user that the desired phone number may be entered. If the number is valid, PATTI seizes an outside telephone line and connects the cellular phone user immediately. If the telephone number being called is invalid, PATTI disconnects and hangs up on the cellular phone user (CPU) (column 1, lines 65-66; column 2, lines 10-20).

Accordingly, with regard to the rejection of **claim 21**, Wise does not include the subject matter for which it is relied and the Office has not met its burden of presenting a case of ***prima facie*** **obviousness** and reversal of the rejections is requested.

Regarding **claim 17**, the Office Action relies on Wise and asserts that Wise discloses determining the current air time ration state associated with the subscriber comprises calculating the current air time ration state based on a current subscriber cost of air time and directs the attention of the Applicants to FIG. 2E. However, as explained above, FIG. 2E illustrates the system monitoring the duration of a call and then determining which billing formula the CPU should be charged. It is respectfully submitted that discussion of determining a charge for a call based on the duration of the call **does not disclose or suggest** determining a **ration state** for taking actions to **ration** air time for the purposes of **screening incoming calls**.

Accordingly, Wise does not include the subject matter for which it is relied, and **claim 17** is not anticipated and is not obvious in view of Pepper and Wise and reversal of the rejection of the Office Action is requested.

With regard to **claims 22-24**, the Office Action stipulates that Pepper fails to disclose determining the current air time ration state associated with the subscriber comprises the elements of **claims 22-24** and relies on Wise for this disclosure. However, it is respectfully submitted that the cited portions do not disclose or suggest the subject matter for which they are relied. Even if FIG. 2E suggests requesting billing

information regarding the subscriber from a billing system, **FIG. 2E** does not disclose or suggest requesting that information as part of process for determining the current air time ration state associated with a subscriber. Instead, FIG. 2E illustrates the real time function, the system monitoring the duration of a call and then determining which billing formula should be used to charge the CPU (cellular phone user) (column 4, lines 26-30).

Even if column 1, line 50 - column 2, line 10, discloses requesting information regarding unused allocated air time from an allotment of air time in an air time allocation period associated with the subscriber, Wise does not disclose or suggest doing so in order to determine a current air time ration state associated with the subscriber. Instead, the cited portion of Wise discloses determining if any air time is available and, if so, allowing a cell phone user to place an **outgoing call**. Wise does not disclose or suggest **rationing** air time. If air time is available, Wise allows calls to be connected. If no air time is available, Wise blocks call completion.

Even if column 5, line 61 - column 6, line 9, discloses requesting information regarding a current cost to the subscriber of air time, Wise does not disclose or suggest doing so to determine a current air time ration state associated with a subscriber.

For at least the foregoing additional reasons, **claims 14-18** and **21-24** are not anticipated and are not obvious in light of Pepper and Wise.

Claims 19 and **20** were rejected under 35 U.S.C. 103(a) as being unpatentable over Pepper in view of Wise and further in view of Chow.

Chow allegedly discloses time-of-day call forwarding in a wireless centrex services system. According to Chow, a wireless telephone subscriber can use a standard cellular/PCS telephone as a wireless extension of their desktop phone, while in the proximity of miniature radio base station capable of communicating with the PCS/cellular telephone. An alleged advantage of such a system is that a subscriber can use the same cellular/PCS telephone that provides a service in the public network in the wireless centrex environment. Additionally, the wireless centrex system provides services and features which are similar to those offered to regular centrex telephone subscribers. Exemplary features include, caller ID, call waiting, call hold, call transfer,

call forwarding and voice messaging (Abstract). The Office Action relies on Chow for disclosure of determining a current day of the week and a current time of day.

It is respectfully submitted that Chow does not disclose or suggest screening a call or making screening decisions based on a current cost of message units.

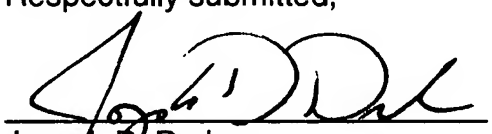
Claims 19 and **20** depend from **claim 18**, which depends from **claim 10**. In this regard, arguments similar to those submitted in support of **claims 10** and **18** are submitted in support of **claims 19** and **20**. Additionally, even if the three references can be combined, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination (MPEP 2143.01 (III)). It is respectfully submitted that the only motivation to combine Pepper, Wise and Chow is that which can be gleaned from the present application. Therefore, it is respectfully submitted that the rejection of **claims 19** and **20** are based on **impermissible hindsight**.

For at least the foregoing additional reasons, **claims 19** and **20** are not anticipated and are not obvious in light of Pepper, Wise and Chow taken alone or in any combination.

CONCLUSION

For all of the reasons discussed above, it is respectfully submitted that the rejections are in error and that **claims 1-30** are in condition for allowance. For all of the above reasons, Appellants respectfully request this Honorable Board to reverse the rejections of **claims 1-30**.

Respectfully submitted,



Joseph D. Dreher
Registration No. 37,123

Thomas Tillander
Registration No. 47,334

:iew

FAY SHARPE LLP
1100 Superior Avenue – Seventh Floor
Cleveland, Ohio 44114-2579
Telephone: (216) 861-5582

Filed:

APPENDICES

VIII. CLAIMS APPENDIX

Claims involved in the Appeal are as follows:

1. (Original) A method for managing message units, the method comprising:

receiving a list of potential calling parties associated with a subscriber, the list including identification information regarding the listed potential calling parties;

associating a priority level to each of the listed potential calling parties; and,

screening calls based on at least one of a calling line identification and a personal identification code associated with the calls and based on information included in the list of potential calling parties, on the associated priorities and on a current cost of message units.

2. (Original) The method of claim 1 wherein screening calls comprises:

determining that the calling party is not a listed potential caller; and

assigning a low priority to the calling party.

3. (Original) The method of claim 1 wherein screening calls comprises:

determining that the calling party is a listed potential caller; and

assigning the priority associated with the listed potential caller to the calling party.

4. (Previously Presented) The method of claim 1 wherein screening calls comprises:

determining a calling line identification associated with the calling party;

comparing the calling line identification with the identification information of the listed potential calling parties;

finding a calling line identification in the list of potential calling parties that matches the calling line identification associated with the calling party; and

assigning a priority level associated with the calling line identification found in the list of potential calling parties to the calling party.

5. (Original) The method of claim 1 wherein screening calls comprises:

receiving a personal identification code from the calling party;

comparing the personal identification code with the identification information of the listed potential calling parties;

finding a personal identification code in the list of potential calling parties that matches the personal identification code received from the calling party; and

assigning a priority level associated with the personal identification code found in the list of potential calling parties to the calling party.

6. (Original) The method of claim 1 wherein screening calls comprises:

completing the requested call to a mobile device of the subscriber if the current ration state is unrestricted and the priority level of the calling party is high.

7. (Original) The method of claim 1 wherein screening calls comprises:

requesting billing information regarding the subscriber from a billing system.

8. (Original) The method of claim 7 wherein requesting billing information regarding the subscriber from a billing system comprises:

requesting information regarding unused allocated air time from an allotment of air time in an air time allocation period associated with the subscriber.

9. (Original) The method of claim 7 wherein requesting billing information regarding the subscriber from a billing system comprises:

requesting information regarding a current cost to the subscriber of air time.

10. (Original) A method for managing air time, the method comprising:

receiving a list of potential calling parties associated with a subscriber, the list including identification information regarding the listed potential calling parties;

associating a priority level with each of the listed potential calling parties;

receiving a call request from a calling party directed at user equipment of the subscriber;

determining a priority level associated with the calling party;

determining a current air time ration state associated with the subscriber; and

processing the call request according to the current ration state and the priority level of the calling party.

11. (Original) The method of claim 10 wherein determining the priority level associated with the calling party comprises:

determining that the calling party is not a listed potential caller; and

assigning a low priority to the calling party.

12. (Original) The method of claim 10 wherein determining the priority level associated with the calling party comprises:

determining that the calling party is a listed potential caller; and

assigning the priority associated with the listed potential caller to the calling party.

13. (Original) The method of claim 10 wherein determining the priority level associated with the calling party comprises:

determining a calling line identification associated with the calling party;

comparing the calling line identification with the identification information of the listed potential calling parties;

finding a calling line identification in the list of potential calling parties that matches the calling line identification associated with the calling party; and

assigning a priority level associated with the calling line identification found in the list of potential calling parties to the calling party.

14. (Original) The method of claim 10 wherein determining the priority level associated with the calling party comprises:

receiving a personal identification code from the calling party;

comparing the personal identification code with the identification information of the listed potential calling parties;

finding a personal identification code in the list of potential calling parties that matches the personal identification code received from the calling party; and

assigning a priority level associated with the personal identification code found in the list of potential calling parties to the calling party.

15. (Original) The method of claim 10 wherein determining the current air time ration state associated with the subscriber comprises:

determining a remaining air time allocation period fraction associated with the subscriber;

determining a remaining air time allocation fraction associated with the subscriber;

determining a remaining air time allocation period to air time allocation fraction ratio associated with the subscriber; and,

determining the current air time ration state based on the air time allocation period to air time allocation fraction ratio.

16. (Original) The method of claim 10 wherein determining the current air time ration state associated with the subscriber comprises:

calculating the current air time ration state based on a function of remaining allocated air time in an air time allocation period.

17. (Original) The method of claim 10 wherein determining the current air time ration state associated with the subscriber comprises:

calculating the current air time ration state based on a current subscriber cost of air time.

18. (Original) The method of claim 10 wherein determining the current air time ration state associated with the subscriber comprises:

determining a current time associated with the subscriber;

determining a remaining air time allocation associated with the current time; and,

determining the current air time ration state as a function of the remaining air time allocation.

19. (Original) The method of claim 18 wherein determining a current time comprises:

determining a current day of a week.

20. (Original) The method of claim 18 wherein determining a current time comprises:

determining a current time of day.

21. (Original) The method of claim 10 wherein processing the call according to the current ration state and the priority level comprises:

completing the requested call to a mobile device of the subscriber if the current ration state is unrestricted and the priority level of the calling party is high; and

connecting the calling party to a message service if the current ration state is at a maximum restriction and the priority level of the calling party is low.

22. (Original) The method of claim 10 wherein determining the current air time ration state associated with the subscriber comprises:

requesting billing information regarding the subscriber from a billing system.

23. (Original) The method of claim 22 wherein requesting billing information regarding the subscriber from a billing system comprises:

requesting information regarding unused allocated air time from an allotment of air time in an air time allocation period associated with the subscriber.

24. (Original) The method of claim 22 wherein requesting billing information regarding the subscriber from a billing system comprises:

requesting information regarding a current cost to the subscriber of air time.

25. (Original) A system operative to conserve message units for a subscriber, the system comprising:

a potential caller list manager operative to receive and maintain a list of potential callers in association with priority levels of the callers, the list being associated with the subscriber;

a message unit conserver operative to determine a priority of a calling party based on the list of potential callers and to determine a current message unit ration state based on a current cost of message units to the subscriber; and

a call processor operative to process a call request of the calling party based on the determined priority of the calling party and the determined current message unit ration state.

26. (Original) The system of claim 25 wherein the message unit conserver is operative to determine the current message unit ration state based on a current opportunity cost measured in terms of remaining message units from a basic allotment of message units in a message unit allocation period.

27. (Original) The system of claim 25 wherein the message unit conserver is operative to determine a priority of a calling party based on the list of potential callers and to determine a current message unit ration state based on a current cost of message units to the subscriber.

28. (Original) The system of claim 25 wherein the message unit conserver is operative to request a current message unit billing category associated with the subscriber from a billing system, to receive the current message unit billing category and use the current billing category to determine the current message unit ration state based on a current cost of message units to the subscriber.

29. (Previously Presented) The system of claim 25 wherein the message unit conserver is operative to request information from a billing system regarding used message units in a current message unit billing category from an allotment of message units in the current message unit billing category associated with the subscriber, to receive the information regarding the used message units and use the information regarding the used message units to determine the current message unit ration state.

30. (Previously Presented) A system for managing message units, the system comprising:

means for receiving a list of potential calling parties associated with a subscriber, the list including identification information regarding the listed potential calling parties;

means for associating a priority level with each of the listed potential calling parties;

means for receiving a call request from a calling party directed at user equipment of the subscriber;

means for determining a priority level associated with the calling party;

means for determining a current message unit ration state associated with the subscriber; and

means for processing the call request according to the current ration state and the priority level of the calling party.

IX. EVIDENCE APPENDIX

NONE

X. RELATED PROCEEDINGS APPENDIX

NONE